Supreme Court
FILED
SEP 22
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-304

MARSHALL I. TEICHNER,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PHILIP SCHICKEDANZ,
One Old Capital Plaza Mall North,
Suite 330,
Springfield, Illinois 62701,
(217) 522-6838,
Attorney for Respondent.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS.

PAGE

Statement 1
- Introduction 1
- The Illinois Rail Explosion 2

Reasons for Not Granting the Writ 5
- The Decision of the Illinois Supreme Court in disciplining Petitioner for His In-Person Acts of Solicitation in Decatur, Illinois, Subsequent to the Railroad Yard Explosion Is Consistent with This Court's Decisions in *Ohralik* and *Primus* 5

Conclusion 7

TABLE OF AUTHORITIES.

Ohralik v. Ohio State Bar Association, 436 U. S. 447 (1978) 2, 5, 6

In re Primus, 436 U. S. 412 (1978) 2, 6

In re Royal, 29 Ill. 2d 458, 194 N. E. 2d 242 (1964) 2

Miscellaneous.

United States Constitution, Amendment I ..... *in passim*

Rule 2-103 *Illinois Code of Professional Responsibilty* . *in passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-304

MARSHALL I. TEICHNER,

Respondent.

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Petitioner,

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

QUESTIONS PRESENTED.

For the purpose of argument, Respondent will address the questions as raised by Petitioner.

STATEMENT.

Introduction.

Petitioner, a licensed Illinois attorney, was suspended from the practice of law by the Illinois Supreme Court for two years. The basis for the suspension was respondent's in-person solicitation of clients following a major railroad disaster which occurred in Decatur, Illinois on July 19, 1974.

While the respondent was also charged with improper solicitation on account of his activities in relation to another major railroad disaster which occurred in Laurel, Mississippi, in January of 1969, the Illinois Supreme Court declined to impose any disciplinary sanction for his conduct finding that it was constitutionally protected. *In re Primus*, 436 U. S. 412 (1978), and *Ohralik* v. *State Bar Ass'n*, 436 U. S. 447 (1978).

The Illinois Rail Explosion.

On the morning of July 19, 1974, an explosion occurred in the yard of the Norfolk and Western Railroad at Decatur, Illinois. The petitioner, whose law office was in Chicago, some one hundred miles from Decatur, arrived at the Decatur, Illinois airport on the evening of July 23, 1974, in the company of one William Royal.[1] At the time of his arrival he had not been employed by anyone injured in the explosion. During the course of renting a car from Connie LaVone Snoke, an employee of Avis Rent-A-Car, he inquired if she knew any people who worked for the railroad and further stated to her if she would give him some names and addresses of people who worked on the railroad, he would pay her and also pay them (Tr. 408).

Prior to his arrival in Decatur, the petitioner placed an unsolicited telephone call to the home of Jerry and Ruth Garner in Decatur. The Garner's home had been damaged and Mrs. Garner had been injured by the explosion. Mrs. Garner's discovery deposition was admitted into evidence in lieu of her testifying at the hearing. She testified she had not been expecting the call from the petitioner, and prior to his calling and introducing himself to her she did not even know him (Adm'r Ex. No. 12, p. 58). She further testified they discussed the explosion,

1. William Royal is a former Illinois attorney. On November 26, 1963, he was suspended from the practice of law for one year. *In re Royal*, 29 Ill. 2d 458, 194 N. E. 2d 242 (1964). Subsequent to this suspension and while other charges of professional misconduct were pending, he struck his name for the Roll of Illinois Attorneys on March 9, 1964. *In re Royal*, M. R. 1023 (Ill. S. Ct., 1964).

the damages to their home and her own injuries, and that during the course of the conversation an appointment was made for petitioner to come to her home the next day.

The petitioner, pursuant to the appointment made in the course of this unsolicited telephone call, came to the Garner's home in the company of William Royal. He and William Royal talked with Mrs. Garner and petitioner indicated if he were to represent Mr. and Mrs. Garner, his fee would be one-third of the recovery (Adm'r Ex. No. 12, p. 62). Mr. Garner was not present during this meeting. Mrs. Garner informed petitioner and William Royal they would have to return and talk with her husband concerning representation. When they later returned to the house, they were informed by Mr. Garner that they were not interested in hiring petitioner to represent them.

The petitioner did have an appointment to talk with one Robert Lichtenberger. Mr. Lichtenberger was working in the railroad yard at the time of the explosion. His car had been destroyed and he had sustained some personal injuries. The petitioner was contacted by Mr. Lichtenberger through one John Bollero of Decatur. Mr. Bollero was the father of a girl, Mary Bollero, then living in Chicago, with whom the petitioner was acquainted.

When petitioner met with Mr. Lichtenberger, he was informed by him that he had already retained another attorney to represent him. Subsequent to this meeting with petitioner, Mr. Lichtenberger accompanied petitioner and William Royal to the Memorial Hospital in Springfield, Illinois, where the seriously burned victims of the explosion had been transferred. While at the hospital, Lichtenberger inquired of one Leesa Hulvey, the fiancée of Darryl Hardy, who had been seriously burned in the explosion, if she had obtained legal representation. When she indicated she had not, he then introduced her to the petitioner. Lichtenberger testified he was asked to do this by petitioner (Tr. 442-44). After this meeting with Leesa Hulvey and subsequent meetings with her and her parents, the petitioner

obtained a contract to represent her for any cause of action she had as a result of the injury to her fiancée, Darryl Hardy. Petitioner had her sign two contracts; one in the name of Leesa Hulvey and the other in the name of Leesa Hardy. After these contracts were signed, the petitioner gave Leesa Hulvey $200.00.

In addition to introducing petitioner to Leesa Hulvey, Robert Lichtenberger, at petitioner's request, contacted Barbara Hardy, the mother of Darryl Hardy, and asked her to contact petitioner (Tr. 448-449). After meeting with Barbara Hardy, the petitioner obtained a contract to represent her for any cause of action she might have as a result of the injuries her son sustained in the explosion.

After obtaining the contract to represent Barbara Hardy, petitioner arranged through her to be introduced to Brenda Hardy, the ex-wife of Darryl Hardy. He was taken to Brenda Hardy's house in Decatur, Illinois by a brother of Darryl Hardy and obtained a contract to represent her and her minor child, Darryl Hardy, Jr., for any cause of action they might have as a result of the injuries to her former husband and father of her child.[2] After obtaining this contract, petitioner gave Brenda Hardy $200.00.

Robert Lichtenberger next contacted one Shirley Tucker (now Shirley Shields) who had also been injured in the explosion. As a result of this contact, an appointment was arranged for petitioner to meet with her. Again, Robert Lichtenberger testified he contacted Mrs. Tucker and arranged for this meeting because petitioner requested him to do so (Tr. 451).

Mrs. Tucker signed a contract employing petitioner to represent her for the injuries she sustained in the explosion. The record further discloses petitioner returned to Mrs. Tucker's

2. Darryl Hardy subsequently died while at Memorial Hospital in Springfield. The petitioner never talked with, nor was he employed by Darryl Hardy. All contracts signed by his fiancée, mother and former wife were signed prior to his death and at a time these people were obviously under great emotional stress due to Darryl Hardy's condition.

house on a later date and while there she placed several long distance calls to Peru, Indiana, to other employees of the railroad injured in this explosion to inquire if they were interested in talking with petitioner concerning the injuries they had sustained. After having placed these calls, the petitioner gave her $100.00.

Finally, the record discloses, petitioner gave Robert Lichtenberger $500.00 in cash. This was given to Lichtenberger after he had put petitioner in contact with Barbara Hardy and after he had accompanied petitioner to the Memorial Hospital to meet Leesa Hulvey and within a few hours of the appointment he had arranged for petitioner to meet with Shirley Tucker.

REASONS FOR NOT GRANTING THE WRIT.

The Decision of the Illinois Supreme Court in Disciplining Petitioner for His In-Person Acts of Solicitation in Decatur, Illinois, Subsequent to the Railroad Yard Explosion Is Consistent with This Court's Decisions in Ohralik and Primus.

The petitioner's conduct, with the exception of the use of a concealed tape recorder, is the same type of in-person solicitation which occurred in *Ohralik* wherein this Court stated:

> "The facts of this case present a striking example of the potential for overreaching that is inherent in a lawyer's in-person solicitation of professional employment." *Ohralik* v. *Ohio State Bar Ass'n,* 436 U. S. 447, 468 (1978).

The State of Illinois has the right to prohibit in-person solicitation for remuneration by an attorney under the circumstances which occurred here. Darryl Hardy, one of the people injured in the explosion, was in the intensive care burn unit of Memorial Hospital. Petitioner neither talked with, nor was he retained by, Darryl Hardy prior to his death.

It was while Darryl Hardy was struggling for his very life that petitioner solicited and obtained contracts to represent his fiancée, Leesa Hulvey, his mother, Barbara Hardy, his ex-wife,

Brenda Hardy, and their minor child, Darryl Hardy, Jr. Again, as this Court stated in *Ohralik*, ". . . the potential for overreaching is significantly greater when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured or distressed lay person." And, such conduct, ". . . does not stand on a par with truthful advertising about the availability and terms of routine legal services, let alone with forms of speech more traditionally within the concern of the First Amendment." *Ohralik, supra,* 465, 455.

The petitioner attempts to bring his conduct outside the impermissible as set out in *Ohralik* and within the permissible type of solicitation as set out in *Primus* because it occurred as the result of a major disaster and quick action was necessary as a "counterforce to the wholesale denial of rights by the concerted actions of claims adjusters." (Petition for Certiorari, p. 19.)

Unlike this Court's decision in *In re Primus,* 436 U. S. 412 (1978), where the solicitation was a written letter offering the free legal services of the ACLU on a matter of genuine public concern, petitioner's solicitation here was in person and motivated by pecuniary gain.

In addition, there is an aggravating factor not present in either *Ohralik* or *Primus:* the $500.00 payment to Robert Lichtenberger. There is no question petitioner used Robert Lichtenberger as a "chaser" and that this money was paid to him only after he had put petitioner in contact with individuals who retained petitioner's services. "The Rules prohibiting solicitation are prophylactic measures whose objective is the prevention of harm before it occurs. The Rules were applied in this case to discipline a lawyer for soliciting employment for pecuniary gain under circumstances likely to result in the adverse consequences the State seeks to avert." *Ohralik, supra,* at 464.

Petitioner's conduct here falls below the minimum standards which the Illinois Supreme Court has the responsibility of maintaining for its licensed attorneys and is not protected by the First Amendment of the United States Constitution.

CONCLUSION.

The Illinois Supreme Court held in this matter that petitioner's in-person solicitation of clients and the payment of $500.00 to Robert Lichtenberger to assist him in obtaining clients in the wake of the railroad yard explosion which occurred in Decatur, Illinois was conduct for which petitioner should be suspended from the practice of law in Illinois for a period of two years.

The decision of the Illinois Supreme Court in this matter is in accord with the decision of this Court construing the scope of an attorney's First Amendment right to in-person solicitation of clients. For this reason, respondent prays that this Court deny the issuance of a Writ of Certiorari to Illinois Supreme Court.

Respectfully submitted,

PHILIP SCHICKEDANZ,
One Old Capital Plaza Mall North,
Suite 330,
Springfield, Illinois 62701,
(217) 522-6838,
Attorney for Respondent.